

A Guide to Withholding Taxes on Performers and Performing Entities



Massachusetts Department of Revenue

2006

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Introduction

This guide was developed to help venues, promoters, and others who pay athletes, entertainers, or speakers for performances in Massachusetts to determine whether they should be withholding tax on their payments, and if so, how much to withhold. It is also designed to help performers and groups of performers (performing entities) understand their obligations regarding income connected with Massachusetts. Individuals who earn income connected with Massachusetts for performances, whether those performances are of an athletic, entertainment, or educational nature, are subject to Massachusetts personal income tax on that income. The performer withholding program was developed to assist these individuals to meet their Massachusetts personal income tax obligation. The goal of performer withholding is the same as the goal of wage withholding: to withhold an amount that is substantially equivalent to the tax amount reasonably estimated to be due. The program, authorized under chapter 262, § 21 of the Acts of 2004, is in effect for performances on or after January 1, 2006.

We hope that you find this guide helpful and urge you to contact us directly if you need further assistance.

Frequently Asked Questions

Who is a performer, and what is a performing entity?

A performer may be an athlete, a paid entertainer, or a speaker. An athlete is any sports figure who is paid for competing, demonstrating, making a public appearance, or endorsing merchandise. An entertainer or speaker may be an actor, singer, musician, dancer, circus performer, comedian, celebrity, or a public speaker or lecturer. Included as performers are individuals paid to further an athlete, entertainer, or speaker's performance, such as a coach, trainer, or crew member.

A performing entity is any entity that employs, engages, or comprises one or more performers. The performing entity's legal classification does not affect the withholding requirement. The performing entity may be a corporation, partnership, limited partnership, or any other legal entity.

Who should withhold tax on performers and performing entities as a performer withholding agent?

If the Massachusetts venue or the lessee of the venue where the performance takes place has a contract to pay the performer or the performing entity, the venue or the lessee of the venue should withhold. If, however, the venue or its lessee is not a party to the contract with the performer or the performing entity, the responsibility to withhold falls to the promoter. If there is no promoter, or if the promoter is not a party to the contract, the withholder may be a vendor or a payroll service provider or any other entity paying compensation for a performance. The Department of Revenue (DOR) will advise who the performer withholding agent should be if those who are in a position to withhold need clarification as to their withholding responsibility (call DOR at 617-887-MDOR or e-mail your questions to the performer withholding unit at entertainers@dor.state.ma.us). No payment that is over the withholding threshold can be made to a performer or performing entity unless the tax has been withheld or waived by DOR; anyone who transfers funds ultimately payable to a performer or performing entity is responsible for ensuring that the proper withholding has occurred.

Example: A circus comes to town every year for five performances. City Arena leases performance space to Trapeze Promotions, the promoter that arranges to bring the circus to town. Trapeze Promotions pays City Arena an amount based on a percentage of ticket sales. Trapeze Promotions pays

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the circus for the performances. Trapeze Promotions, the lessee of the venue, is the performer withholding agent because it has a contract with the circus, which is the performing entity. City Arena does not have a contract with the performers or a performing entity and does not withhold.

Example: Sports Association rents the Richmond Country Club and sponsors a golf tournament there. Twenty professional golfers come to Massachusetts to participate in the tournament. Sports Association pays each golfer to participate. Sports Association must register as a performer withholding agent and withhold from each golfer.

Example: Troupe Inc., a theater company, brings a play to town. Performances are held at the City Theater, which has rented performance space to Troupe Inc. for a flat rental fee. Thirty professional actors perform in the play; each actor is paid as an independent contractor. Troupe must register as a performer withholding agent and withhold from each actor.

Example: A Massachusetts radio station, WPER, promotes a semi-annual music and entertainment event. It hosts the event at City Arena, which it has rented for the occasion. WPER contracts with four entertainers to perform at the four-hour event. WPER must register as a performer withholding agent and withhold from each of the entertainers.

Example: The Extreme Automobile Association rents Valley Exhibition Center for its automobile show. As part of the show, the association contracts with an actor from a weekly network television show to appear at the event. The actor is paid \$15,000 for appearing. The Extreme Automobile Association must register as a performer withholding agent and withhold from the actor.

Example: Cranium Computer Company holds its annual employee gathering at Banquet Hall, a local convention center. Cranium Computer hires a magician to provide entertainment for its employees after dinner. Cranium Computer Company must register as a performer withholding agent and withhold from the magician.

Example: Prize Fight Events, a boxing promoter, rents an auditorium in Milltown, Massachusetts, to hold an event called Thursday Night Fights. Prize Fight Events contracts separately with each of eight boxers to pay purses ranging from \$10,000 to \$25,000 to participate in the event. Prize Fight

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Events must register as a performer withholding agent and withhold from each of the boxers.

Example: Sports Memorabilia Inc. sponsors a baseball merchandise and autograph signing event at the Chique Mall. Sports Memorabilia has a contract with the famous baseball player, Johnny Great, to appear and sign autographs at the mall for a fee of \$10,000 and 30 percent of the gross sales from merchandise sold. Sports Memorabilia Inc. must register as a performer withholding agent and withhold tax from Johnny Great.

Example: Lorna Leader, candidate for president, requests that her political action committee (Leader P.A.C.) hire the band Gentle Breeze to perform at her fundraiser held at the Deluxe Hotel in Springfield. Leader P.A.C. pays the three-member band \$20,000 to perform for two hours at the event. Leader P.A.C. must register as a performer withholding agent and withhold taxes for the event.

Does withholding have to occur for every performance in Massachusetts?

Withholding does not have to take place in the following situations:

- *Payment is below the dollar threshold established by the Department of Revenue. See the Department's website at www.mass.gov/dor or most recent Directive on this subject to learn the threshold. DOR may direct a payer to withhold notwithstanding the threshold if a performer is earning substantial Massachusetts source income; see the Directive for more information.*
- *The performer or performing entity communicates with the Department and receives approval prior to the performance to have withholding waived. See "For what reasons will withholding be waived?" on page 10 for more information.*
- *A tax-exempt federally recognized 501(c)(3) entity makes gross payment for a performance or event that does not exceed \$10,000. See the Department's website at www.mass.gov/dor or most recent Directive on this subject to learn more about the application of this threshold.*

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Even if withholding is not required, performers who earn income in Massachusetts are subject to personal income tax in Massachusetts and should make estimated tax payments to Massachusetts.

Example: (a) Classical Symphony Orchestra, a tax-exempt 501(c)(3) charitable organization, pays Ophelia Bowman, a violinist, \$30,000 to perform with the orchestra for a three-night engagement as a special guest. Classical Symphony Orchestra must register as a performer withholding agent with DOR and withhold from Ophelia Bowman.

(b) Same facts as above, except that Ophelia Bowman performs for only one night and her fee is \$10,000. Classical Symphony Orchestra is not required to withhold since the gross payment for the event is not more than \$10,000. Even though withholding is not required, Ophelia still owes personal income tax in Massachusetts and should make estimated tax payments to Massachusetts.

Example: The Pub, a bar that occasionally provides live entertainment for its patrons on weekend nights, hires Jesse Crooner, a folksinger, to sing for a nominal fee on one Friday night. The Pub does not have to withhold from Jesse if the amount paid to him is below the dollar threshold established by DOR.

Example: Walden University, a tax-exempt federally recognized 501(c)(3) entity, is holding its May graduation ceremony in its sports center complex. As part of the event, the association contracts with former U.S. President Politico to speak at the event for \$15,000. The university must register as a performer withholding agent and withhold tax from the former president.

Example: Tailor's Inc., a major retail store, sponsors a charity fundraiser for victims of Hurricane Iris at the City Arena. Tailor's Inc. contracts with a rock band, The Great Rockers, to perform at the event for \$8,000. Tailor's Inc. must register as a performer withholding agent and withhold from the rock band.

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Does the performer withholding agent have to withhold separate amounts for every member of a performing entity?

No. The performer withholding agent withholds once from each payment to a performer or a performing entity. In other words, if the withholding agent makes one payment to a performing entity for several performers who are members of that performing entity, it withholds one amount. If it pays two different performing entities for performances, it withholds an amount from the payment to each performing entity. If it makes two different payments to the same performing entity, it withholds an amount from each payment. The performing entity, not the performer withholding agent, is responsible for allocating the withheld amount to each of its members or participants. See “What obligations does a performing entity have?” on page 14 for more information. If the performer withholding agent makes two separate payments for a performance, one to an individual performer, and one to a performing entity, it withholds the proper amount from each payment.

Example: (a) The OneDahs, a five-member rock-and-roll band organized as a partnership, performs for one night at City Arena, in a concert promoted by Beat Promotions. Pursuant to its contract with The OneDahs, Beat Promotions makes one payment to The OneDahs for their performance. Beat Promotions is required to withhold a single amount from its payment to the band.

(b) Same facts as above, except that Beat Promotions cuts two checks, one for Flossie Nightingale, the lead singer, and another for the rest of the band. Beat Promotions should withhold separate amounts from each payment.

How much should the performer withholding agent withhold?

The amount that the performer withholding agent should withhold is the individual income tax rate multiplied by the gross payment, unless the performer or performing entity has received permission in advance from DOR, communicated to both the performer or performing entity and the performer withholding agent, to reduce the amount of withholding.

Example: The Revs, a blues band, signed a contract to appear at the Massachusetts Stadium for three days. Big Events Promotions has rented the stadium and arranged the event. The agreement between Big Events and The Revs calls for a guaranteed payment of \$100,000 to the band, an additional

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\$25,000 for each sellout and 25 percent of the gross of all Revs logo merchandise sold during the concerts. On the last day of the show, Big Events, the performer withholding agent, prepares the tax report. The concert series had two sellouts and total merchandise sales of \$60,000. Big Events withholds on a total of \$165,000, based on the \$100,000 guarantee, the additional two sellouts which added \$50,000 to the payment, and \$15,000 representing 25 percent of the gross merchandise sales. At the personal income tax rate of 5.3 percent, Big Events would withhold \$8,745.

Example: Yukker's Comedy Club contracts with a stand-up comic to work a week-end (Thursday, Friday and Saturday) to provide entertainment to its customers. The contract calls for the comedian to work all three nights for a total of \$6,000 plus an additional \$1,000 for each sellout show. Over the contracted weekend, one show was a sellout. The total compensation was \$7,000. Yukker's withholds the 5.3 percent personal income tax rate multiplied by \$7,000, or \$371.

Example: The four-member Chad Green Band contracts with Zinger Promotions to perform at City Arena. Three of the band members are individuals while the fourth band member, Chad Green PC, is a corporate entity. The contract calls for the fee of \$100,000 to be divided and paid directly to each band member as follows: \$20,000 each to the three individual band members, and \$40,000 to Chad Green PC. Zinger Promotions, the performer withholding agent, withholds \$1,060 (\$20,000 times 5.3 percent, the current personal income tax rate) from the three individual band members, and \$2,120 (\$40,000 times 5.3 percent) from Chad Green PC. Zinger Promotions must complete the online report and payment using the names and social security numbers of the three individuals and the name Chad Green PC, with its federal identification number, for the fourth member. (Chad Green PC should file and pay its own corporate excise separately.)

For what reasons will the withholding amount be reduced?

A performer or performing entity may request that payment to which the tax rate is applied be reduced by the expenses of the performer or performing entity. (This request is made on a Form PWH-RW. See “How can a performer or performing entity reduce or waive the amount of withholding?” on page 12

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for more information.) Expenses that may reduce the payment to the performer or the performing entity for withholding purposes include, for example, the costs of lodging, transportation, commissions, employee salaries that are already subject to Massachusetts withholding, per diem payments (a daily allowance to employees for incidental expenses), and insurance. These expenses must be reasonable, documented, and submitted to DOR at least 10 business days in advance of the performance. After receipt of a Form PWH-RW, DOR will issue, in advance of the performance, a "Notice of Allowable Deductions," notifying the performer or performing entity, as well as the withholding agent, of the approved amount.

Example: The band, Sincere Sisters, has been contracted to appear at City Arena for three days in January. The contract calls for the band to do concerts on Wednesday, Friday and Saturday nights. The Sincere Sisters band will be renting eight hotel rooms for four nights. The performers will be traveling on two tour buses with three employees. The Sincere Sisters band submits expenses to DOR on a Form PWH-RW 10 business days prior to the event for the hotel, fuel, lease and insurance for the buses, employee salaries, per diems (a daily allowance for employee meals and snacks) and meals for the group for four days. DOR reduces the taxable amount for the allowable expenses and before the performance sends the band and its performer withholding agent a "Notice of Allowable Deductions."

For what reasons will withholding be waived?

A performer or performing entity may request that withholding be waived. (This request is made on a Form PWH-WW. See "How can a performer or performing entity reduce or waive the amount of withholding?" on page 12 for more information.) Waivers may be granted under the following circumstances:

- a performer is a resident of Massachusetts and has paid all of his or her Massachusetts taxes to date, including estimated taxes, for the current tax year;
- a performer is treated as an employee of the withholding agent or performing entity for federal income tax withholding purposes;

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- a performing entity continuously maintains an office in Massachusetts and is current with all of its Massachusetts tax obligations;
- a performing entity is registered with DOR for withholding taxes as an employer; or
- a performer or performing entity anticipates that there will not be sufficient income to subject the affected performer or performers to personal income tax in Massachusetts (income from all sources, inside and outside of Massachusetts, will not exceed \$8,000 for individuals).

Example: City Arena signs a contract to co-promote an ice skating show with Stars on Ice, an out-of-state company that promotes ice skating shows and employs skaters. Stars on Ice sends DOR a Form PWH-WW, A Request for Waiver of Withholding, because it is registered with DOR as an employer and is in compliance with its Massachusetts tax obligations. DOR grants the waiver request and City Arena does not have to withhold from Stars on Ice.

Example: Johnny Chelsea is an entertainer who is a Massachusetts resident. Mr. Chelsea is contracted by Big Wig Promotions to appear at the Massachusetts Stadium for three shows. Two weeks in advance of the first show, Mr. Chelsea submits to DOR a Form PWH-WW and secures a "Notice of Withholding Waiver" from DOR indicating that he is compliant with his tax filing requirements and current year estimated deposits. DOR also sends a copy of the "Notice of Withholding Waiver" to Big Wig Promotions. No withholding is required.

Example: The Dingbats, an out-of-state baseball team, compete in a league that requires them to play in Muddy Bottom Park in Massachusetts. The players are employed by the team, which is registered to withhold in Massachusetts. Because Massachusetts tax is withheld from the players' salaries by the team, no performer withholding is required.

Example: The rock group Buffalo Wings signed a contract to appear at Boston Park for two dates in August. The contract calls for a guarantee of \$100,000 to be divided and paid equally to each of the four band members. Two of the band members, Dana and Dave, are Massachusetts residents. The other two band members reside in California. Dana and Dave submit

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Form PWH-WW to request a waiver of their withholding taxes. DOR approves Dana's waiver request because she is current with all of her tax filing obligations. However, DOR denies Dave's waiver request because he failed to file income tax returns for the previous two tax years. DOR sends a "Notice of Withholding Waiver" to Dana and the performer withholding agent. The withholding agent should withhold taxes on the \$25,000 each paid to Dave and the two other nonresident band members.

How can a performer or performing entity reduce or waive the amount of withholding?

Download, from the DOR website, a Form PWH-RW (Request for Reduced Withholding) or a Form PWH-WW (Request for Waiver of Withholding). Send the completed form to DOR by e-mail, fax or mail. E-mail the form to entertainers@dor.state.ma.us, or fax the form to DOR at 617-887-6589. If you prefer, you can mail the form to DOR at Bureau of Desk Audit, Filing Enforcement-Entertainment, 200 Arlington Street, Fourth Floor, Chelsea, MA 02150. The request for reduction or waiver of withholding must be received by DOR at least 10 business days before the scheduled performance. DOR will notify the performer or performing entity, as well as the performer withholding agent, of the amount to withhold.

How does a performer withholding agent comply with its withholding obligation?

Register. A performer withholding agent must register on DOR's website, using WebFile for Business, under Performer Withholding. (To find WebFile for Business, go to www.mass.gov/dor and click on the "WebFile for Business" quick link.) Registration must be completed at least five business days before the performer withholding agent makes its first report and payment.

Report and Pay. The performer withholding agent must also use WebFile for Business to report and pay the amount of taxes withheld during a quarter-monthly period within three days after the close of the quarter-monthly period. The withholding agent does not need to wait until the close of the quarter-monthly period; report and payment may be made as early, and as frequently, as the withholding agent chooses. A quarter-monthly period is defined as the first seven days of a calendar month, the eighth through the 15th day of a calendar month, the 16th through the 22nd day of a calendar month, or the 23rd through the last day of a calendar month. Payment must

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be made by ACH Debit. ACH Debit means an electronic transfer of funds initiated by DOR, upon taxpayer instruction, to debit a taxpayer's designated bank account and credit funds to a designated Commonwealth of Massachusetts bank account. (ACH Debit is similar to a paper check in that DOR receives the funds on the settlement date authorized by the taxpayer, and for the amount specified by the taxpayer.) To be timely, the taxpayer must complete the electronic authorization for the debit before 4:00 p.m. Eastern time on the business day preceding the date the funds are due.

Quarterly Return. The performer withholding agent must, on or before the last day of the month following the close of a calendar quarter, file a return that reconciles all amounts withheld during the calendar quarter. This return must be filed on WebFile for Business. Returns must be filed on or before April 30, July 31, October 31, and January 31. Any amounts withheld during the quarter that have not previously been paid must be paid at the time of the quarterly return. The performer withholding agent will be able to view an online payment history in reconciling amounts withheld during the quarter.

Does a performer withholding agent have to make a quarterly return even if there is no withholding for that quarter?

Yes. A performer withholding agent who is registered must make a quarterly report even if the withholding agent has no withholding for that quarter. The obligation to file quarterly reports continues until the withholding agent closes its registration as a performer withholding agent with DOR.

What other obligations does a performer withholding agent have?

A performer withholding agent must issue a federal Form 1099-MISC (or federal Form 1042-S if the performer or performing entity is a foreign — i.e., non U.S. — person under federal law) to the performer or the performing entity on whom it withholds. A Form 1099-MISC or 1042-S should be issued only to the performer or the performing entity to whom the withholding agent makes a payment. The Form 1099-MISC or Form 1042-S is required in Massachusetts even if it is not required under federal law.

The performer withholding agent must file information returns, such as federal Form 1099-MISC, with DOR on or before June 1 of each year if it has made payment of Massachusetts source income to a nonresident individual

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or entity, as required under the nonresident personal income tax regulation. In addition, the performer withholding agent must keep complete records, including copies of all Forms 1099-MISC or 1042-S it has issued. The performer withholding agent should keep records that show the name and social security number or federal tax identification number of the performer or performing entity, the gross amount paid to the performer or performing entity, the amount of Massachusetts income tax withheld, and the dates and locations of all performances.

What obligations does a performing entity have?

A performing entity must allocate the withheld tax amount among its members, whether they are individuals or other legal entities. This is accomplished on a Withholding Allocation Form, Form PWH-WA. This form is available on the DOR website. The form must be completed by the performing entity and given to each of the performing entity's members or participants. The sum of the withheld tax allocated to all of the performing entity's members or participants must equal the amount withheld on the payment to the performing entity. Any recipient of the PWH-WA that is not an individual is also a performing entity and must complete its own PWH-WA forms and give them to its members or participants. The process of dividing the withheld amount among members or participants of a performing entity should continue until the recipient of the PWH-WA is an individual.

Each performing entity that gives out a PWH-WA to a performer or a performing entity must keep a copy for its records. A performing entity that obtains permission from DOR for reduced or waived withholding must keep a copy of that notice.

A performing entity is also required to pay any other tax that may be due. If the performing entity is a corporation, for example, it may owe Massachusetts corporate excise.

Example: The corporate entity, Chad Green Band 2005 Tour Inc., contracts to perform at City Arena. The contract calls for a fee of \$100,000 to be paid to the corporation as a single payment. Zinger Promotions, the performer withholding agent, should withhold at the personal income tax rate of 5.3 percent, or \$5,300, for the event and complete the online payment

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and report listing only the corporation. Chad Green Band 2005 Tour Inc., as a performing entity, is responsible for issuing Forms PWH-WA to each member of the band, allocating to each band member the withheld amount based on the amount paid to the band member. Chad Green Band 2005 Tour Inc. pays each of three band members \$20,000, and issues each band member a Form PWH-WA allocating to that band member \$1,060 of the total amount withheld. Chad Green Band 2005 Tour Inc. pays Chad Green, the individual, \$40,000, and issues him a Form PWH-WA allocating \$2,120 of the withheld amount to him. Chad Green Band 2005 Tour Inc. should also pay its corporate excise separately.

How does an individual performer claim, on his or her Massachusetts personal income tax return, amounts that have been withheld?

An individual can claim amounts withheld as credits towards his or her tax obligation on his or her Massachusetts personal income tax return (Form 1 or Form 1-NR/PY). These amounts cannot be taken as a credit on any other type of return. In order to claim the credit, a statement of the amount withheld should be attached to the individual's Massachusetts personal income tax return. The statement of the amount withheld will be in the form of a 1099-MISC or a 1042-S if the performer was paid as an individual by the Massachusetts performer withholding agent, or in the form of a PWH-WA if the performer was part of a performing entity.

How can I get more information?

You can get more information by visiting the DOR website at www.mass.gov/dor, or you can call DOR at 617-887-MDOR. You can also e-mail your questions to the performer withholding unit at entertainers@dor.state.ma.us.

What kind of help is available?

DOR issues a number of useful publications on various state tax issues. These publications include: tax-specific guides written in question and answer format such as **A Guide to the Department of Revenue: Your Taxpayer Bill of Rights**; and public written statements, such as Regulations, Technical Information Releases, Directives and Letter Rulings, that explain the Commonwealth's tax laws in detail. DOR also offers Small Business Workshops designed to help all new or small businesses understand their filing requirements. Please call 617-887-5660 for more information.

Where to get forms and publications



Many Massachusetts tax forms and publications are available via the Department's website at www.mass.gov/dor.



To obtain Massachusetts forms and publications by phone, call the Department's main information lines at 617-887-MDOR or toll-free in Massachusetts at 1-800-392-6089.



Certain forms and publications can be obtained through DOR's Fax on Demand system. For a complete Fax on Demand menu, please call 617-887-1900 using the handset and the keypad of your fax machine.

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Department of Revenue

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